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SEP 25 2014

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GABRIEL PINEIDA,

Plaintiff,

v.

CHARLES D. LEE, et al.,

Defendants.

Case No. 12-cv-01171-JST

**ORDER GRANTING PRELIMINARY  
INJUNCTION**

Re: ECF No. 138

**I. INTRODUCTION**

Before the Court is a motion for preliminary injunction filed by Gabriel Pineida, an inmate at Salinas Valley State Prison (“SVSP”). Pineida suffers from ulcerative colitis, “a chronic disease of the colon that causes inflammation and sores, called ulcers, in the inner lining of the colon.” Declaration of Dr. Hammerman (“Hammerman Decl.”), ECF No. 143-3, ¶ 3. Pineida seeks an order directing SVSP to provide him with a low fiber diet and “no fewer than two cans of nutritional shakes per day designed for meal supplementation.” ECF No. 138-19, ¶ 7.

**II. BACKGROUND**

**A. Factual Allegations**

Following his diagnosis with ulcerative colitis in 2003, Pineida experienced years of symptoms including “severe abdominal pain and cramping, bloody diarrhea, fatigue, and significant weight loss.” Declaration of Gabriel Pineida (“Pineida Decl.”), ECF No. 138-2, ¶ 3. In 2008, Pineida underwent an emergency colectomy procedure, during which a portion of his colon was removed. *Id.* at ¶ 4. As part of the procedure, surgeons created a hole in Pineida’s abdomen through which waste would involuntarily pass into a colostomy bag, which then had to be emptied regularly. Declaration of Jeffrey Rothman, ECF No. 138-1, ¶ 14.

1       In 2010, Pineida underwent a J-pouch procedure, which is the “preferred procedure  
2 following a colectomy,” in which the “bottom of the small intestine is doubled into a ‘J’ shape to  
3 create a small pouch” allowing the patient to excrete waste through the anus. Rothman Decl. ¶ 15.  
4 Following the J-pouch procedure, Pineida was instructed by his physician to maintain a low fiber  
5 diet in order to lower bowel activity and “prevent blockage or obstruction of the pouch.” Pineida  
6 Decl. ¶ 7; Rothman Decl. ¶ 17. Pineida was warned that he could develop pouchitis, “a chronic,  
7 long-term condition in which the lining of the pouch becomes inflamed or irritated.” Rothman  
8 Decl. ¶ 22. Pineida was also advised that he should supplement his food intake with nutritional  
9 shakes to ensure that he received sufficient nutrients and caloric intake despite his dietary  
10 limitations. Pineida Decl. ¶ 7; Rothman Decl. ¶ 21.

11       Following his surgery, prison officials provided Pineida with a pamphlet produced by the  
12 California Correctional Health Care Services, which instructed him that “[t]he prison food service  
13 staff is not required to provide you with any special food substitutions. Avoiding the problem  
14 foods is your responsibility.” ECF No. 138-4. The pamphlet claimed that “[t]he meals prepared  
15 in your prison are adequate to meet your dietary needs,” but warned that “[i]f a certain food  
16 bothers you, do not eat it at all.” Id.

17       Pineida found that the meals prepared for the general prison population contained many  
18 foods which caused him pain and discomfort due to his condition. He requested that prison  
19 officials provide him with an individualized low fiber diet, supplemented with nutritional shakes.  
20 Pineida’s request was denied and he was informed, following an Inmate Health Care Appeal, that  
21 “SVSP does not have special diets for which you meet the criteria.” ECF No. 138-6. The denial  
22 was upheld at two further levels of internal appeal. Id.

23       Pineida alleges that, because of SVSP’s failure to provide him with a low fiber diet, he  
24 suffers from symptoms of pouchitis, including irritation of his J-pouch, severe cramping that  
25 impairs his mobility, bloody and uncontrollable diarrhea, and persistent hunger due to his inability  
26 to eat many of the foods provided on the general prison menu. Pineida Decl. ¶ 20. Pineida’s  
27 symptoms are not disputed. Although SVSP provided Pineida with supplemental nutritional  
28 shakes for a period of time, they stopped providing them to him on March 22, 2014. On June 3,

1 2014, SVSP resumed providing Pineida with supplemental shakes, although the shakes provided  
2 after this date were shakes “intended for diabetics,” which Pineida reports cause him “irritation,  
3 discomfort, and a burning sensation.” Id. at ¶ 21.

4 **B. Jurisdiction**

5 This court has jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C. § 1331, because  
6 Plaintiff’s Section 1983 claims arise under federal law.

7 **C. Legal Standard**

8 A plaintiff seeking a preliminary injunction “must establish that he is likely to succeed on  
9 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the  
10 balance of equities tips in his favor, and that an injunction is in the public interest.” Am. Trucking  
11 Associations, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir.2009) (quoting Winter v.  
12 Nat. Resources Defense Council, 555 U.S. 7, 20 (2008)). Injunctive relief is “an extraordinary  
13 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.”  
14 Winter, 555 U.S. at 22.

15 To grant preliminary injunctive relief, a court must find that “a certain threshold showing  
16 is made on each factor.” Leiva-Perez v. Holder, 640 F.3d 962, 966 (9th Cir. 2011). Provided that  
17 this has occurred, in balancing the four factors, “serious questions going to the merits and a  
18 balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary  
19 injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and  
20 that the injunction is in the public interest.” Alliance for the Wild Rockies v. Cottrell, 632 F.3d  
21 1127, 1135 (9th Cir. 2011).

22 **III. ANALYSIS**

23 **A. Likelihood of Success on the Merits**

24 Pineida claims that prison officials’ deprivation of a low fiber diet and supplemental  
25 nutrition shakes to an inmate suffering from severe ulcerative colitis states a claim under the  
26 Eighth Amendment for deliberate indifference to a prison inmate’s serious medical needs. See  
27 Estelle v. Gamble, 429 U.S. 97, 104 (1976). “Establishing a violation of the Eighth Amendment  
28 requires a two-part showing.” Foster v. Runnels, 554 F.3d 807, 812 (9th Cir. 2009). An inmate

1 must first show that he was deprived of something “sufficiently serious.” Id. (internal quotations  
2 and citations omitted). “The inmate must then make a subjective showing that the deprivation  
3 occurred with deliberate indifference to the inmate’s health or safety.” Id.

4 **1. “Sufficiently Serious”**

5 “A deprivation is sufficiently serious when the prison official’s act or omission results in  
6 the denial of the minimal civilized measure of life’s necessities.” Id. (internal quotations and  
7 citations omitted). “Adequate food is a basic human need protected by the Eighth Amendment.”  
8 Keenan v. Hall, 83 F.3d 1083, 1091 (9th Cir. 1996). While prison food need not be “tasty or  
9 aesthetically pleasing,” it must be “adequate to maintain health.” Id. (quoting LeMaire v. Maass,  
10 12 F.3d 1444, 1456 (9th Cir. 1993)).

11 Pineida has submitted evidence that the food provided by SVSP does not meet his dietary  
12 needs, as it contains many high fiber foods which, if consumed, would inflame the symptoms of  
13 his pouchitis and cause him severe pain. SVSP’s refusal to provide a low fiber diet has forced  
14 Pineida to choose between consuming food that inflames his symptoms or going hungry in light of  
15 the lack of low fiber options. Pineida cites to several persuasive cases which have concluded that  
16 a failure to provide a medically-recommended diet to an inmate constitutes a sufficiently serious  
17 deprivation to state an Eighth Amendment claim. See Mandala v. Coughlin, 920 F. Supp. 342  
18 (E.D.N.Y. 1996) (prison’s failure to provide low fiber diet following colostomy stated a claim),  
19 Woulard v. Food Service, 294 F. Supp. 2d 596 (D. Del. 2003) (failure to provide diet of six small  
20 meals a day to Crohns’ sufferer stated a claim), Johnson v. Harris, 479 F. Supp. 333, 339  
21 (S.D.N.Y. 1979) (failure to provide special diet for diabetic forced prisoner “into the draconian  
22 choice between jeopardizing his health by eating, or suffering, like Tantalus, the punishment of  
23 being shown food that he cannot eat” and therefore stated a claim).

24 Defendants argue that, although Pineida does not receive an individualized low fiber diet  
25 supplemented by nutritional shakes, Pineida could meet his nutritional needs by consuming only  
26 those foods on the regular prison menu that are low in fiber. In Foster, the Ninth Circuit found a  
27 deprivation of food to be “sufficiently serious” when a prisoner was “denied 16 meals in 23 days.”  
28 554 F.3d at 812. Based on a schedule of three meals a day, this means that the plaintiff in Foster

1 was deprived of 16 out of 69 meals that he should have been provided during this period. Pineida  
2 has submitted menus of the food served at SVSP, with the food items that inflame his symptoms  
3 struck through in red. ECF No. 138-7. These annotated menus indicate that Pineida is able to  
4 consume less than half of the food provided to the general prison population. At many meals,  
5 even the aggregate of the items that Pineida could consume comfortably would be considered a  
6 snack at best. Because the Ninth Circuit found a violation in Foster, where a prisoner was  
7 deprived of fewer than one fourth of his meals during a finite 23 day period, the Court has little  
8 difficulty concluding that providing a prisoner with only half as many food options as those  
9 available to other prisoners for an indefinite period constitutes a sufficiently serious deprivation to  
10 state a claim under the Eighth Amendment.

11 Defendants note that "Pineida has been able to maintain a body weight within the range of  
12 a normal weight for his height." Hammerman Decl. ¶ 11. Certainly, this fact is for the good,  
13 since if Pineida's weight had fallen to an unhealthy level his health challenge would be even more  
14 severe. The primary issue is not Pineida's weight, however, but the ongoing, painful, and severe  
15 symptoms he experiences when SVSP provides food that his digestive system cannot tolerate.  
16 These symptoms, which are at the core of Pineida's motion, are not disputed by Defendants.

17 Because Pineida has shown that over half of the food items provided to him cause him to  
18 experience severe pain if consumed, he has shown a likelihood of success in demonstrating a  
19 sufficiently serious deprivation.

20 **2. Deliberate Indifference**

21 In Estelle, the Court made clear that negligent conduct on the part of prison officials was  
22 insufficient to establish a claim for deliberate indifference; instead "a prisoner must allege that acts  
23 or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs."  
24 Id. "However, the Supreme Court has also recognized that while 'deliberate indifference' under  
25 Estelle requires more than a showing of mere negligence, 'something less than [a showing of] acts  
26 or omissions for the very purpose of causing harm or with knowledge that harm will result' will  
27 suffice." Mandala v. Coughlin, 920 F. Supp. 342, 353 (E.D.N.Y. 1996) (citing Farmer v. Brennan,  
28 511 U.S. 825, 825 (1994)).

1 Pineida has provided compelling evidence that prison officials knowingly refused to  
2 provide him with the diet recommended by doctors following his J-pouch procedure. Pineida has  
3 included documentation of the denial of his Health Care Services appeal by prison officials.  
4 During this appeal, Pineida provided the officials with a December 2011 "Discharge Summary"  
5 from his primary care physician instructing "the patient must adhere to a strict low residue diet to  
6 prevent further episodes of obstruction in the future as well as malnutrition as high-fiber foods will  
7 not be absorbed by his small intestine." ECF 89-2 at 14. Prison officials have been made even  
8 more aware of Pineida's suffering as a consequence of this lawsuit. Notwithstanding their  
9 awareness, however, Defendants have still refused to provide Pineida with the alternative diet that  
10 he needs. Pineida has demonstrated that Defendants have consciously disregarded a risk to  
11 Pineida's health.

12 **B. Irreparable Harm**

13 A party seeking a preliminary injunction must demonstrate that "irreparable injury is *likely*  
14 in the absence of an injunction." Winter, 555 U.S. at 22. Pineida argues that the continued  
15 deprivation of a low fiber diet and supplemental shakes causes him avoidable pain. Under Ninth  
16 Circuit law, "constitutional violations cannot be adequately remedied through damages and  
17 therefore generally constitute irreparable harm." Nelson v. Nat'l Aeronautics & Space Admin.,  
18 530 F.3d 865, 882 (9th Cir. 2008) rev'd on other grounds, 562 U.S. 134 (2011). Because the  
19 Court has concluded that Pineida has shown a likelihood of success on the merits in demonstrating  
20 a violation of his Eighth Amendment rights, he has also demonstrated a likelihood of irreparable  
21 injury in the absence of an injunction.

22 Defendants argue that Pineida has not shown a likelihood of irreparable harm because,  
23 even with a low fiber diet, he is likely to continue to suffer *some* pain as a result of the chronic  
24 nature of his ulcerative colitis. Defendants' argument misses the point. Pineida does not argue  
25 that Defendants' must ensure that his life is free of *all* pain; he only seeks a diet which mitigates  
26 *avoidable* pain. Furthermore, Defendants' have not established that Pineida's pain would not be  
27 substantially decreased by his proposed low fiber diet. In fact, the declaration submitted by  
28 Defendants' own expert actually acknowledges that "a low fiber diet would decrease symptoms of

1 gas and cramping related to indigestible material passing through narrowed areas of small  
2 intestine," and a higher fiber diet causes an increase in bowel movements and "more gas and  
3 cramping." Hammerman Decl. ¶ 8-9. Indeed, given that their own expert agrees with Pineida's  
4 fundamental claim, it is difficult to see why Defendants have not already voluntarily provided  
5 Pineida with the diet he and his doctors have requested.

6 Because SVSP's failure to provide Pineida with a low fiber diet violates his constitutional  
7 rights and causes him pain that could be avoided by the issuance of an injunction, Pineida has  
8 demonstrated irreparable injury.

### 9 C. Balance of Equities

10 Pineida's argument regarding the hardship he faces is compelling. Like all prison inmates,  
11 Pineida depends on prison officials to provide him with "adequate sustenance on a daily basis."  
12 Foster, 554 F.3d at 814. Currently, many of the food options prison officials provide to him cause  
13 him considerable pain. Denying this injunction would perpetuate Pineida's ongoing suffering.

14 Defendants' hardship arguments are considerably less compelling. Defendants argue that a  
15 preliminary injunction would create confusion and "unnecessary court intervention." Defendants'  
16 Opposition ("Opp."), ECF No. 143 at 6. In particular, Defendants balk at Exhibit A to Pineida's  
17 proposed order for preliminary injunction, which includes a suggested list of "acceptable" and  
18 "prohibited foods." ECF No. 138 at 5-6. Defendants claim that Pineida "seeks this Court to ban"  
19 food items which "may typically be included in a lower-fiber diet," thereby restricting Pineida's  
20 "access to a variety of acceptable food items." ECF No. 143 at 6. Defendants also argue that  
21 Pineida's proposed order is a gambit "designed to cause a violation" that would lead to further  
22 court intervention, because Pineida includes on his prohibited foods list dishes that Defendants  
23 claim are composed only of other foods listed on his "acceptable foods" list. Id.

24 The Court is not persuaded by Defendants' hardship arguments. Although certain foods on  
25 Pineida's proposed "prohibited foods" list may be typically be consumed by patients on a low  
26 fiber diet without causing pain or discomfort, Pineida has submitted evidence that "each person's  
27 digestive system is different" and will respond to ulcerative colitis in different ways. Rothman  
28 Decl., ¶ 19. Defendants make no argument that the food items on Pineida's "acceptable foods" list

1 are prohibitively expensive or would require SVSP to order items not otherwise in stock. Indeed,  
2 Pineida has submitted copies of the menus detailing the meals served at SVSP from January 27,  
3 2014 through April 13, 2014. ECF No. 138-7. These menus demonstrate that SVSP already  
4 carries Pineida's requested "acceptable foods," however, because of the way that meals are  
5 typically prepared for the general prison population, only about half of the items on a daily menu  
6 are acceptable for consumption by Pineida. This requires Pineida to choose between either "eating  
7 foods that cause him pain or and discomfort, or going hungry." ECF No. 138, ¶ 6. Requiring  
8 SVSP to provide to Pineida on a more regular basis those foods it already has on hand is a minor  
9 hardship.

10 The Court is likewise unconvinced that Pineida's requested injunction is in any way  
11 calculated to cause a violation. Pineida's requested relief is not at all opaque: he wants to eat food  
12 that will not cause him to be in constant pain. His proposed order clearly delimits the food items  
13 that he can tolerate and those which he cannot. Pineida allows that the Court could simply issue a  
14 general injunction directing the provision of a low fiber diet, but notes that the specificity of his  
15 proposed order will help to lessen the burden of compliance on SVSP. The Court agrees.

16 Defendants' also argue that the "prohibited foods" list contains meals, such as chicken  
17 cacciavatore, which are composed entirely of foods on Pineida's "acceptable foods" list and thus  
18 should not upset Pineida's stomach.<sup>1</sup> ECF No. 143 at 6-7. These arguments are speculative at  
19 best. Even though Defendants retained the services of a physician to oppose this motion, ECF No.  
20 143-3 (Hamerman Decl.), their arguments about what foods Pineida "should" be able to eat are  
21 supported by a Correctional Food Manager rather than by any competent medical evidence.  
22 Particularly given the absence of any evidence of hardship to SVSP, there is no reason for  
23 Defendants to jury-rig substitutions to Pineida's acceptable foods list when they can instead  
24 simply follow it. Even if Defendants are convinced that Pineida might like chicken cacciavatore if  
25 he just gave it a chance, they can simply not serve Pineida chicken cacciavatore and instead serve  
26 him the food items listed on his "acceptable foods" list. This does not present any hardship.

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28 <sup>1</sup> Pineida responds that the "spices and oils" in chicken cacciavatore upset his stomach.

1           The balance of hardships tips heavily in favor of granting Pineida the injunctive relief that  
2 he seeks.

3           **D.     Public Interest**

4           Defendants make no argument that granting Pineida an injunction would harm the public  
5 interest. Moreover, any such argument would be unsuccessful, as “it is always in the public  
6 interest to prevent the violation of a party's constitutional rights.” Melendres v. Arpaio, 695 F.3d  
7 990, 1002 (9th Cir. 2012) (citations and internal quotations omitted).

8           **IV.    CONCLUSION**

9           For the reasons discussed above, the Court finds that Plaintiff has met all of the elements  
10 that must be established in order to prevail on a request for preliminary injunctive relief.  
11 Specifically, he has shown: 1) that serious questions going to the merits of his claim have been  
12 raised; 2) he is likely to suffer irreparable harm in the absence of preliminary relief; 3) the balance  
13 of hardships tips sharply in his favor; and 4) an injunction is in the public interest. Winter, 555  
14 U.S. at 20; Alliance for the Wild Rockies, 632 F.3d at 1131.

15           Therefore, the Court hereby GRANTS Plaintiff's request for preliminary injunction.  
16 Defendants Grounds, Marshall, Adams, and Bright and all other persons or entities acting or  
17 purporting to act for them or on their behalf, and any and all persons and entities in active concert  
18 and participation with Defendants who receive notice of this Order, shall be and hereby are  
19 ORDERED to:

20           a.       Provide Pineida with a diet consisting of at least 2,000 calories per day that is low  
21 in fiber as ordered by his physicians, dieticians, and/or nutritionists, and as specified in the  
22 attached Exhibit A; and

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1                   b.       Provide Pineida with no fewer than two cans of nutritional shakes per day designed  
2 for meal supplementation (rather than management of diabetes or any inapplicable medical  
3 condition).

4                   **IT IS SO ORDERED.**

5                   Dated: September 25, 2014

6                     
7                   JON S. TIGAR  
8                   United States District Judge

**Exhibit A to Preliminary Injunction Order**

**PROHIBITED FOODS:**

- High fiber grain products (e.g., dinner roll, graham crackers, English muffin)
- Hot or dry cereal (e.g., grits, cornmeal, hot rice with cinnamon)
- Corn or cornmeal products (e.g., corn tortillas, cornbread)
- Cinnamon roll
- Canned fruit (including apples or pineapple)
- Fruit juices that include pulp or fiber
- Apples
- Egg yolks or scrambled eggs
- Peanut butter
- Brown rice
- Spanish rice with spices or chili pepper
- Spices and spicy condiments (e.g., mustard, relish, taco sauce, ketchup, salsa, taco or enchilada sauce, tartar sauce, hot sauce, cinnamon, barbecue sauce)
- Nuts and seeds, trail mix, corn nuts
- Raw or cooked vegetables (e.g., carrots, broccoli, bell peppers, cabbage, onions, celery, coleslaw, )
- Beans and bean products (e.g., baked beans, chili beans, pinto beans, red beans, Mexican beans, refried beans, three bean salad)
- Spicy meats (e.g., sausage, hot links, salami, hot dogs, chorizo)
- Greasy meat dishes or sauces (e.g., gravy, sloppy joe, chicken cacciatore, spaghetti with meat sauce, enchiladas, shepherd's pie, cream beef, chicken cheese supreme, chicken chop suey, tamale pie, egg roll, fried rice, goulash on noodles, chicken tetrazzini, beef hash, chicken parmesan sandwich, beef cabbage casserole, beef or chili macaroni and cheese, chicken alfredo with broccoli, chicken fajita)
- Foods that combine any of the above listed items (e.g., breakfast pocket, tuna or barbecue calzone, bean burritos, bagel dog)

**ACCEPTABLE FOODS INCLUDE:**

- White bread products (e.g., flour tortillas, plain crackers or saltines, danish pastry, hoagie rolls, hot dog or hamburger buns, biscuit, plain pasta, pancakes, waffles, macaroni and cheese, French roll)
- Bananas, and/or melons
- Egg whites (e.g., boiled eggs)
- Cheese or cottage cheese
- Non-spicy condiments (e.g., jelly without seeds or fruit bits, syrup, mayonnaise)
- Plain, well-cooked meats or fish without sauce or gravy (e.g., roast turkey, roast beef, lunchmeats, beef patty, fish filet, baked chicken without skin, turkey ham, PIA-brand entrees)
- Vegetarian pizza
- Spaghetti with marinara sauce
- Steamed or cooked white rice, or Spanish rice with no spices or chili pepper
- Potatoes (e.g., mashed potatoes, baked potatoes, scalloped potatoes, oven baked potato)

- wedges, hash brown potatoes, tri-tater potatoes, steamed potatoes, chips, potato salad)
- Cookies, cake, pudding, or ice cream/sherbet